

REMARKS / ARGUMENTS

1. Response to November 25, 2009 Non-Final Office Action

The following claims were pending prior to this paper:

- Claim set 1 consisting of Method claims 1 – 9;
- Claim set 2 consisting of System claims 10 – 13, with claim 12 withdrawn from consideration;
- Claim set 3 consisting of System claims 14 – 17, with claim 17 withdrawn from consideration; and
- Claim set 4 consisting of System claims 21 - 26.

For the convenience of the Examiner and clarity of purpose, Assignee has reprinted the substance of the Office Action in ***bolded and italicized font***. Assignee's arguments immediately follow in regular font.

3. Claims 1, 6, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Bishop et al. (US 6,904,458), hereinafter referred to as Bishop.

a. As per claim 1, Bishop discloses a method comprising: configuring a subordinate program with a monitoring program on a monitoring computer (Col. 9 lines 14-50 - note that application(s) to be installed to the client are subordinate to the monitoring software of the computing component in that the computing component has complete access and control over the application(s) to be installed at the client both at time of installation and at run-time); and installing the configured subordinate program from the monitoring computer to a target computer (Col. 9 lines 26-50).

As a threshold matter, Assignee has chosen to amend independent claim 1 to more particularly point out and distinctly claim what Assignee seeks to protect through this application. Assignee does not agree with the Office's factual conclusions concerning Bishop and its application to claim 1 as it existed prior to this paper. However, because Assignee has

chosen amend claim 1 in this paper, Assignee has not presented herein all of the perceived errors in the Office's analysis and application of Bishop, and Assignee specifically reserves its right to more fully traverse the Office's analysis and application of Bishop at a later date.

Assignee respectfully submits that amended claim 1 is patentable over Bishop at least because Bishop does not disclose or suggest monitoring a network supporting apparatus with a monitoring program on a monitoring computer, generating a subordinate program instruction based on an operational status of the apparatus and transmitting a subordinate program instruction to a subordinate program on a target computer. Reconsideration and withdrawal of this rejection is requested in light of the amendments to claim 1.

b. As per claim 6, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises pushing the subordinate program to the target computer via the network (Col .9 lines 26-51).

c. As per claim 9, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

Assignee understands this to be a rejection of claims 6 and 9 as allegedly anticipated by Bishop. Assignee understands the citation to the USV document to be in error. Alternately, the Office has failed to present a *prima facie* case of obviousness based on Bishop and the USV document.

For at least the reasons presented for claim 1, Assignee submits that dependent claims 6 and 9 are likewise patentable. Reconsideration and withdrawal of these rejections is

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respectfully requested.

5. Claims 2-5, 10-11, 13-16, 21-22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop in view of GENEREX USV-Management, hereinafter referred to as USV.

Assignee respectfully challenges the Office's reliance on the GENEREX USV-Management document (hereafter "USV").

The Office has failed to present a *prima facie* case that the USV document is prior art to the subject application. First, the Office does not identify what type of "prior art" the Office thinks USV is. Does the Office contend it is public knowledge in the U.S. under 102(a)? Does the Office contend that USV is a "printed publication in a foreign country" under 102(a). Second, the Office fails to allege a prior art date for USV. The Office has failed to carry its burden to present a *prima facie* case of unpatentability based on USV.

Despite the Office's failings concerning USV, Assignee has investigated the pedigree of USV. It is clear that USV was obtained by the Office from an unregulated Internet archiving service. The archiving service alleges that USV came from a UK version of a German website (i.e. www.quazar.de/uk/). The archiving service also alleges that an unidentified, fourth party web crawler obtained this page from the UK version of the German website on 2001-02-12. However, the archiving service expressly states on its website that it has no **personal knowledge** of who obtained USV or when it was actually obtained. The only fact the archiving service will swear to by affidavit is that USV is a true and accurate copy of the document the archiving service had in its possession on 2009-11-21, the date the Office downloaded USV from the archiving service. The Office also has no personal knowledge of USV.

While Assignee does not accede that USV is an Internet publication, the MPEP

specifically addresses the use of Internet publications as prior art. Section 2128 states unequivocally that an Internet publication is only prior art when ***the date of publication is established.***

Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted. *>Absent evidence of the date that the disclosure was publicly posted, if< the publication >itself< does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b)*>. However<, it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication >or posting<. See MPEP § 901.06(a), paragraph IV. G.

The Office has provided no evidence of the date that USV was publicly posted. Thus, the Office has not carried its burden to show that USV is prior art to the subject application.

a. As per claim 2, Bishop fails to explicitly disclose the monitoring computer receiving a message from the apparatus.

USV teaches a monitoring computer receiving a message from a UPS apparatus (Para. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of receiving a message from an apparatus at a monitoring computer with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of monitoring locally attached uninterruptible power supplies for observing failure conditions (Para.1).

b. As per claim 3, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses the monitoring program detecting whether a shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

c. As per claim 4, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses transmitting a shutdown instruction from the monitoring program to the subordinate program if the shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

d. As per claim 5, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses

shutting down the target computer with the subordinate program based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 51-65).

For at least the reasons presented above for claim 1 and below for claims 10 and 14, claims 2 – 5 are likewise patentable. Reconsideration and withdrawal of these rejections is requested.

e. As per claims 10 and 14, Bishop discloses a system comprising: a subordinate program configured by the monitoring program and adapted to be installed on the target computer by the monitoring program, the subordinate program adapted to receive a predetermined instruction and performing a shutdown routine of an affected target computer (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the claimed first through third routines associated with the monitoring program.

USV teaches a monitoring computer having a monitoring program and adapted to receive data from the apparatus, the monitoring program comprising: a first routine determining an alarm condition of the apparatus from the data (Para. 1 -2), a second routine determining a target computer on the network effected by the alarm condition of the apparatus (Para. 2,4), and a third routine sending a predetermined shutdown instruction to the affected target computer over the network (Para. 2,4).

Assuming solely for purposes of this paper, and without prejudice, that that Office can carry its burden to prove that USV is prior art to the subject application, USV does not disclose or suggest what the Office alleges. To the extent USV can be understood, and to the extent USV is enabled, it does **not** disclose or suggest, for example, that the server computer running UPSMan can identify a target computer (i.e., a client) that will be affected by the UPS' condition. Merely sending a message to each computer using the server (monitoring computer) is not "identifying a target computer."

Further, even if USV could identify a target computer, USV does **not** disclose or suggest that the monitoring computer (i.e., the server running UPSMan) can **shut down** a target computer. At most, USV discloses that the monitoring computer can shut **itself** down or send a warning to users connected to the server.

In contrast, independent claims 10 and 14 require that the monitoring computer identify which computers among the networked computers will be affected by an operational characteristic of the supporting apparatus. These claims also require that the monitoring computer supply an instruction to an identified computer based on information received from the apparatus, which instruction will shut down the identified computer. Thus, even if USV were enabling prior art it does not disclose or suggest what the Office claims it does.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of detecting an alarm condition, a target computer affected by the alarm condition, and sending a predetermined instruction to the affected target computer over the network with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of providing a UPS management software which monitors a locally attached UPS device for alarm conditions, and in the event of an alarm, functions to provide a simultaneous shutdown of several servers which are all supported by the same UPS (Para. 1,2,4).

To the extent Bishop and USV can be combined, as shown above the combination of Bishop and USV would still fail to disclose all of the claim limitations of claims 10 and 14. The combination would not disclose, among other things, identifying a target computer and sending a shut down instruction to a target computer. Reconsideration and withdrawal of these rejections is requested.

f. As per claims 11 and 16, Bishop and USV teach the invention substantially as claimed above. However, Bishop fails to explicitly disclose wherein the apparatus is a UPS.

USV teaches wherein the apparatus is a UPS (Para. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of monitoring an attached UPS device with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of providing remote UPS monitoring and in the event of an alarm, providing means for shutting down affected servers which are supported by the same UPS (Para. 1,4).

g. As per claims 13 and 15, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

For at least the reasons presented above for independent claims 10 and 14, claims 11, 13, 15 and 16 are likewise patentable. Reconsideration and withdrawal of these rejections is requested.

h. As per claim 21, Bishop discloses a system comprising: a monitoring computer and a target computer (Figure 1, Col. 9 lines 26- 50); a network coupling the monitoring computer and the target computer (Figure 1); a monitoring computer adapted to configure a subordinate program to be installed over the network on a target computer by the monitoring program and install the subordinate program on the target computer over the network (Col. 9 lines 26-50); the target computer comprising an installed subordinate program and adapted to receive a network message including a shutdown instruction and shut down the target computer based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the UPS and receiving and determining steps performed by the monitoring computer as claimed.

USV teaches a monitoring program adapted to receive a network message including data from the UPS (Para. 1-2), determine an alarm condition of the UPS from the data in the message (Para. 2,4), and determine a computer on the

network affected by the alarm condition of the UPS (Para. 2,4), wherein the UPS sends a shutdown instruction (Para. 1, 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of detecting an alarm condition, a target computer affected by the alarm condition, and sending a predetermined instruction to the affected target computer over the network with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of providing a UPS management software which monitors a locally attached UPS device for alarm conditions, and in the event of an alarm, functions to provide a simultaneous shutdown of several servers which are all supported by the same UPS (Para. 1,2,4).

For at least the reasons set forth above with independent claims 1, 10 and 14, independent claim 21 is likewise patentable. Reconsideration and withdrawal of this rejections is requested.

i. As per claim 22, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises pushing the subordinate program to the target computer via the network (Col. 9 lines 26-51).

j. As per claim 25, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein the subordinate program comprises portable code (Col. 6 lines 61-67).

k. As per claim 26, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein the subordinate program has default configuration parameters that may be reset during installation on the target computer (Col. 9 lines 33-37 - see configuration parameters reset upon boot).

For at least the reasons presented above for claim 21, dependent claims 22 25 and 26 are likewise patentable. Reconsideration and withdrawal of these rejections is requested.

6. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop in view of VERITAS WinINSTALL 2000, hereinafter referred to as Veritas. a. As per claims 7-8, Bishop fails to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

For at least the reasons presented above for claim 1, dependent claims 7 and 8 are likewise patentable. Reconsideration and withdrawal of these rejections is requested.

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop and USV further in view of Veritas.

a. As per claims 23-24, Bishop and USV teach the invention substantially as claimed above. However, Bishop fails to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from the monitoring computer to the target computer comprises

installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, and emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

For at least the reasons presented above for claim 21, dependent claims 23 – 24 are likewise patentable. Reconsideration and withdrawal of these rejections is requested.

2. New Claims 27 - 34

New claims 27 - 33 are presented herein. Each claim is patentable for at least the reasons presented above for independent claims 1, 10, 14 and 21.

3. Conclusion

Claims 1, and 3 - 9 have been amended herein and Assignee submits that each claim presented herein is patentable. A timely notice of allowance is respectfully requested.

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Assignee thanks the Examiner for his consideration and effort on this file. If there are any questions or if additional information is needed, the Examiner is invited to telephone or email the undersigned.

Respectfully submitted,
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